IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5002 OF 2005

Vishwanath Gana Wabale. ...Petitioner.
Vs.
Bharat Sanchar Nigam Limited. ...Respondent.
....
Mr. U. P. Warunjikar for the Petitioner.
None for Respondent.
.....

CORAM : F.I.REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

October 14, 2005.

P.C.

Rule. Heard forthwith.

2. The Petitioner joined the defence services as a soldier on 13th August 1965 and was working as Wireless Operator in the Artillery Regiment 151 AD. On 21st July 1971, he made a request for discharge on personal ground and the same was allowed on compassionate ground. Subsequent to that the Petitioner came to be appointed on temporary basis as a peon in the Indian Posts and Telegraphs Department vide order dated 18th August 1972. It is the case of the Petitioner that he came to be promoted to the post of Telegraph Operator and thereafter to the post of Senior Supervisor. On 18th February 1999, he was called upon to submit

his military discharge certificate and to opt for converting the same for civil service. The Petitioner immediately forwarded the said documents. The authorities also called upon the employees to exercise their option to get absorbed in Bharat Sanchar Nigam Limited. On 22nd September 2004, the Petitioner made a representation for counting of his past services. On 11th October 2004, the Petitioner was called upon to submit his explanation as to why he had not applied for counting his past service within one year upon re-employment. Ultimately, after several representations, the Petitioner was informed by a letter of 5th April 2005 that his request cannot be considered. It is, in view of that, the Petitioner approached this Court by the present petition.

3. On behalf of the Respondent, a reply has been filed by the Assistant General Manager (Administration). In the affidavit, reliance has been placed upon Rule 19 of the Central Civil Services (Pension) Rules, 1972, read with G. I. D. (2) which provides for counting of past service. It is pointed out that the Petitioner's case did not fall within the said rules. In so far as the pensionary benefits are concerned, it is pointed out that the Petitioner has been granted all benefits while working with the

Respondents. For the purposes of counting the past service, his case was forwarded and in fact the Military Discharge Certificate was posted in the service book in the year 1999 only. The Petitioner opted to join Bharat Sanchar Nigam Limited. The requirement of counting past service is that an application must be moved within one year considering O.M. Dated 31st May 1988. The Respondents also replied to the representation made by the Petitioner in which he has stated that due to the personal problem he could not approach the office for completing formalities at the time of appointment as a peon in 1972.

4. It is not necessary for us to go into various aspects of the matter as Rule 19, no doubt, requires that the service rendered with the Military can only be considered in terms as set out in the rules. The Government of India, however, issued an O.M. On 31st May 1988 which required that the exercise of option be within a period of one year from the date of his re-employment. Various representations came to be made as that requirement was causing hardship and in the context of that, the Government further directed as a one time relaxation that it will be open to re-employed military pensioners to exercise the option under Rule 19(1) upto 23rd

November 1994. It appears that this was not brought to the notice of the Petitioner. However, there was an office communication by the Respondents to the Petitioner dated 18th February 1999 wherein certain directions were issued in the matter of entries in the service book including surrender of pensionary benefits granted to the official, for Military Service rendered by him. By this communication, the Petitioner was called upon to give attested copies. The Petitioner pursuant to that had forwarded the documents. In other words, it appears that the service book was sought to be corrected in a suo motu exercise of powers by the Respondents themselves.

5. Considering the fact that it was never brought to the attention of the Petitioner that he had to opt within one year in terms of Rule 19(1) and as it appears that when he joined in 1972 there was no such limitation and as further the Respondents themselves have directed changes in the service book, the ends of justice would be met with if the Respondents are directed to consider the Petitioner's case bearing in mind what we have set out and accordingly dispose of the the Petitioner's representation within a period of 16 weeks from today. It is made clear that all

contentions which we have not dealt with, are kept open for consideration on merits if the Petitioner is ultimately aggrieved by the order passed on his representation.

6. Rule made absolute accordingly. No order as to costs.

(F. I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)